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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LEONARD NEELY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>B. C. ADAMS,</p> <p>Defendant - Appellee.</p>
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No. 08-16332

D.C. No. 2:07-cv-00003-GEB-CMK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

California state prisoner Leonard Neely appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action, without prejudice, for

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

failure to exhaust administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal for failure to exhaust, and for clear error its factual determinations. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed the action because Neely did not exhaust administrative remedies before filing his complaint in federal court. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (per curiam) (holding that exhaustion under § 1997e(a) must occur prior to commencement of the action); *see also Ngo v. Woodford*, 539 F.3d 1108, 1109 (9th Cir. 2008) (noting that “proper exhaustion” requires adherence to administrative procedural rules). Further, Neely's conclusory pleadings and submissions opposing the motion to dismiss were insufficient to show that prison officials frustrated his ability to grieve.

Neely's remaining contentions are unpersuasive.

AFFIRMED.